

THE LECOMPTON CONSTITUTION.

IN THE HOUSE OF REPRESENTATIVES,

MARCH 10, 1858.

Mr. STEPHENS, of Georgia, from the Select Committee of Fifteen, made the following

REPORT.

The select committee of fifteen appointed under the resolution of the House of the 8th of February, to whom was referred the message of the President of the United States of the 2d of February, "concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same," with instructions "to inquire into all the facts connected with the formation of said constitution, and the laws under which the same originated; and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question or propriety of the admission of said Territory into the Union under said constitution; and whether the same is acceptable and satisfactory to the majority of legal voters of Kansas," have had all the matters committed to them under consideration, and now present the following report:

The leading object of the resolution under which the committee was raised seems to have been the ascertainment of all the essential facts bearing upon the question or propriety of the admission of Kansas as a State under the Lecompton constitution, in accordance with the recommendation of the President. This object has been the controlling principle of the committee's action in their investigation. The scope of their duties embraced an inquiry into all facts relating to the legality and regularity of the proceedings resulting in the formation of that constitution, both antecedent and subsequent thereto, showing whether or not it be the embodiment of the legally and fairly expressed will of the *bona fide* citizens of Kansas. With this understanding of the field of labor before them, the committee directed their attention—

1st. To a law passed by the territorial legislature providing for taking the sense of the people at the October election in 1856, upon the expediency of calling a convention to form a State constitution.

2d. The law of the Territory passed the 19th of February, 1857, in

25 Oct. 1990

2

THE LECOMPTON CONSTITUTION.

Special Collections

pursuance of the popular will expressed under the previous act, providing for an election to be held on the 15th June, 1857, of delegates to such a convention.

3d. The official registry of voters, and the apportionment made by the acting governor (Stanton) of delegates to the convention so called in accordance with the provisions of said act.

4th. The assembling of the convention at Lecompton on the first Monday of September, 1857, under the act last aforesaid, and the journal of their proceedings.

5th. The constitution formed by the convention so assembled, alluded to in the message of the President.

6th. The action of the people on the questions submitted to them by one of the clauses of the schedule in the constitution.

These laws, facts, and proceedings constitute, in the judgment of the committee, all matters having any material bearing upon the main questions embraced in the recommendation of the President, and covered by the resolution of the House. But they permitted to be filed, and report to the House without deeming them relevant or material.

7th. The act of the territorial legislature of Kansas, at its called session in December last, providing for a vote to be taken on the 4th of January, just passed for and against said constitution.

8th. The official announcement of said vote.

And, also, as cumulative, though not material—

9th. The letter of Mr. Calhoun, president of the Lecompton convention, to the chairman of the Committee on Territories in the Senate.

All these papers are appended in full to this report, (except a part of the journal which has not yet been received, but which is expected in time to be presented with the rest,) and marked as exhibits in regular order. The committee deem it unnecessary to go into an elaborate exposition of them by detail. A general reference to some of the material parts, for the purpose of illustrating the conclusions to be drawn from them, will be quite sufficient. Those which they deem material are all documentary, about which there can be no dispute. They show a full and complete history of the proceedings resulting in the formation of the Lecompton constitution from their beginning to their end: First, the law for taking the sense of of the people upon the propriety of applying for admission. Next, the law authorizing the call, in pursuance of the popular will. Next, the registry of voters, and apportionment of delegates. Next, the assembling of the convention, with their proceedings. Then, the constitution so formed; and, lastly, the ratification of it in the mode and manner provided by the convention. The legality and regularity of the whole are marked throughout. Every step in its progress was taken in strict conformity to law. But little appears on the face of the record even for comment. The question for the consideration of the House is, ought Kansas to be admitted as a State under the constitution so presented?

By the Constitution of the United States "new States may be admitted by Congress into this Union," and by the same instrument it is provided that "the United States shall guarantee to every State in this Union a republican form of government." Under the first of

Anti-Slavery

F

685

.45121

1858

these clauses eighteen new States have been admitted since the Union was formed; and two, besides Kansas, are now applying for admission. The usual questions of inquiry upon the applications of new States have been—

1st. In relation to the number of the population.

2d. The regularity of the proceedings under which the application has been made.

3d. Whether the constitution presented be republican in form.

In this case the attention of the committee has not been directed to the question of population. That point seems to be conceded on all sides. Upon the point of legality and regularity no question can arise. No State ever before applying exhibited greater regularity in her proceedings. On this point there can be no doubt. The only other one, as to the republican form of the constitution—that, too, seems to be equally clear, and beyond cavil or dispute.

What, then, are the objections to the recognition of the constitution, and the admission of the State under it? These, it is true, arise mostly on matters outside of the record. But the committee propose briefly to notice them in connexion with some seemingly founded on the face of the record itself.

The first of the latter class is that urged by Governor Walker. The main ground of his opposition is the fact that the entire constitution has not been submitted for ratification to a popular vote. This objection rests upon the assumption that the validity of every constitution formed for the government of any people depends upon its having received such a sanction. His argument, in his own words, rests upon the "principle that sovereignty is vested exclusively in the people of each State, and that it performs its first and highest function in forming a State government and State constitution. This highest act of sovereignty, in my judgment, can only be performed by the people themselves, and cannot be delegated to conventions or other intermediate bodies."

That sovereignty is vested exclusively in the people of each State, and that it performs its first but not highest function in forming a State government and State constitution may be granted. But that this first act of sovereignty in making a constitution can only be performed by the people themselves, and that the power to perform it cannot be delegated to conventions or intermediate bodies, is not granted. Such a doctrine is not only novel but utterly at war with all our past history. In support of it Gov. Walker cites no authority but his own. He announces it as the conviction of his individual judgment, and the only authority he refers to to sustain it is that of previous speeches made by himself, in which he had expressed the same opinion. But the position cannot be maintained, either on principle or any recognized authority. Reason is against it, and so is precedent. When it is admitted that sovereignty, "resides with the people," and that it is "inalienable," it does not follow that the right to exercise and execute sovereign powers cannot be delegated by them to others. If that were so, there could be no such thing as representative government. No law could be passed except by the people *en masse*. This would uproot and overturn all our forms. It is the

very essence of sovereignty that it may act by itself or by any other it may choose to appoint. The enactment of all laws and the execution of them require the exercise of sovereign power as necessarily as the formation of a constitution. A constitution is but a law. It establishes the modes or channels through which the sovereignty of the people is to be exercised, not "*in propriis personis*," but by chosen representatives. The formation of such organic law cannot be said to be the highest act or function of sovereignty. There can be no *higher* act of sovereignty than the declaration of war; for this may put in jeopardy the existence of sovereignty itself; and yet in our representative system this is left, not to the people themselves, but to their representatives.

Hence, though it be true that the formation of a State constitution is the "first function of sovereignty," it does not follow that this may not be performed by representatives chosen and clothed with full power to act for the people in this matter, as well as in all others requiring the exercise of sovereign power.

Logically considered, there is no more reason why the people cannot make a constitution by others clothed with full power to do so than that they can in this way put not only their political, but their individual, existence in hazard upon the fortunes of war. The formation of a constitution requires, it is true, the exercise of sovereign power, and so does the commonest act of legislation. If the power to do one can be exercised by an agent or representative, so can the other; and such has been the uniform understanding in this country from the beginning of our history. The Constitution of the United States was not ratified by a popular vote. In all the States it was adopted by conventions chosen by the people and clothed with full powers to act for them. In its provision for its own amendment it does not contemplate any ratification by the people through a popular vote to give validity to any such amendment. Such amendments are to be acted upon by the State legislatures. In all the old States, with one exception, their first constitutions were formed and put into operation through the "intermediate body" of a convention. Massachusetts alone submitted hers to a popular vote. The constitution of the State of Pennsylvania, the native State of Governor Walker, that under which he was born and reared, and under which that great and prosperous Commonwealth has grown up and attained her present high eminence in wealth, power, and renown, derived all its sanction by the people through their representatives in convention. The same is true of Mississippi, his once adopted State, and the same is true of a majority of the States of this Union. If Governor Walker's judgment in this particular be right, then all these constitutions are necessarily invalid, null, and void; and we have neither constitutions nor laws in more than half of the States of the Union. This doctrine is as preposterous as it is monstrous. Its bare statement is enough to consign it to general repudiation and condemnation. The uniform course in our past history has been, when a new State applies for admission, to see that the sovereignty of the people has spoken through its legally constituted organs. The question of submitting their constitution to a popular vote or not is one for the people, and those whom

they clothe with power to determine this question, as well as others, for them. In the case of Kansas, in the first act appended to this report, Exhibit 1, it was provided to take the sense of the people upon the question of providing by law for the calling of a convention to form a constitution, and *by law* to define the powers or duties of the convention. This will be seen by the section (6) of the act. The vote was almost unanimous for the legislature so to call a convention and to define its duties. But few votes were cast against it. This, apart from the statement of Mr. Calhoun, appears from public documents accessible to all. The legislature did call a convention. They could have required them to submit their work to the people. This was a matter for their own discretion; but this they did not do. This convention was elected with unlimited and plenary powers. That such a convention could be so clothed no one can doubt who is acquainted with the history of similar bodies. They, therefore, had full power, at their own discretion, to submit the whole constitution formed by them, or any part or no part of it, just as they pleased, for ratification. This the people well understood before the election of delegates. This Governor Walker virtually told them himself. In his inaugural address he says:

"The people of Kansas, then, are invited by the highest authority known to the constitution to participate freely and fairly in the election of delegates to frame a constitution and State government. The law has performed its entire appropriate function when it extends to the people the right of suffrage, but it cannot compel the performance of that duty. Throughout our whole Union, however, and wherever free government prevails, those who abstain from the exercise of the right of suffrage authorize those who do vote to act for them in that contingency, and the absentees are as much bound under the law and constitution, where there is no fraud or violence, by the act of the majority of those who do vote, as if all had participated in the election. Otherwise, as voting must be voluntary, self-government would be impracticable, and monarchy or despotism would remain as the only alternative.

"You should not console yourselves, my fellow-citizens, with the reflection that you may by a subsequent vote defeat the ratification of the constitution. Although most anxious to secure to you the exercise of that great constitutional right, and believing that the convention is the servant and not the master of the people, yet I have no power to dictate the proceedings of that body."

This language clearly conveys the idea that the convention might or might not submit the constitution to be formed by them to a vote of the people; and so far from the people not being able to delegate power or to authorize others to make a constitution for them being true, as now contended for by Governor Walker, it follows most clearly, from what he says, that such authority could be given even by their silence. The authority conferred would be implied by their abstaining from the polls. On the question of the powers of the delegates to be elected to the convention Mr. Stanton addressed the people as follows:

"The government especially recognizes the territorial act which provides for assembling a convention to form a constitution with the view to making application to Congress for admission as a State into the Union. That act is regarded as presenting the only test of the qualification of voters for delegates to the convention, and all preceding repugnant restrictions are thereby repealed. In this light the act must be allowed to have provided for a full and fair expression of the will of the people through the delegates who may be chosen to represent them in the constitutional convention. I do not doubt, however, that, in order to avoid all pretext for resistance to the peaceful operation of this law, the convention itself will in some form provide for submitting the great distracting question

regarding their social institutions which has so long agitated the people of Kansas to a fair vote of all the actual *bona fide* residents of the Territory, with every possible security against fraud and violence. If the constitution be thus framed, and the question of difference thus submitted to the decision of the people, I believe that Kansas will be admitted by Congress without delay as one of the sovereign States of the American Union, and the territorial authorities will be immediately withdrawn."

Here Mr. Stanton clearly admits the full power of the delegates to be chosen to form a constitution, valid in itself, whether it be submitted or not for ratification. It is true, he expresses great confidence that the "distracting question," which was the slavery question, would be "in some form" submitted to a fair vote of the *bona fide* residents of the Territory, and the firm belief that if "the question of difference" should be submitted to the decision of the people Kansas would be admitted without delay. This is exactly what was done by the convention, as the testimony accompanying this report shows. As to the powers of the convention, however, the committee will cite but one other authority. That is a speech made by Judge Douglas at Springfield, Illinois, on the 12th June, 1857, just before the election of the delegates took place.

"Kansas," said he, "is about to speak for herself, through her delegates assembled in convention to form a constitution preparatory to her admission into the Union on an equal footing with the original States. Peace and prosperity now prevail throughout her borders. The law under which her delegates are about to be elected is believed to be just and fair in all its objects and provisions. There is every reason to hope and believe that the law will be fairly interpreted and impartially executed, so as to insure to every *bona fide* inhabitant the free and quiet exercise of the elective franchise. If any portion of the inhabitants, acting under the advice of political leaders in distant States, shall choose to absent themselves from the polls, and withhold their votes with a view of leaving the free-State democrats in a minority, and thus securing a pro-slavery constitution in opposition to the wishes of a majority of the people living under it, let the responsibility rest upon those who, for partisan purposes, will sacrifice the principles they profess to cherish and promote. Upon them, and upon the political party for whose benefit and under the direction of whose leaders they act, let the blame be visited of fastening upon the people of a new State institutions repugnant to their feelings and in violation of their wishes. The organic act secures to the people of Kansas the sole and exclusive right of forming and regulating their domestic institutions to suit themselves, subject to no other limitation than that which the Constitution of the United States imposes. The democratic party is determined to see the great fundamental principle of the organic act carried out in good faith. The present election law in Kansas is acknowledged to be fair and just. The rights of the voters are clearly defined, and the exercise of these rights will be efficiently and scrupulously protected. Hence, if the majority of the people of Kansas desire to have it a free State, (and we are told by the republican party that nine-tenths of the people of that Territory are free-State men,) there is no obstacle in the way of bringing Kansas into the Union as a free State by the votes and voice of her own people, and in conformity to the great principles of the Kansas-Nebraska act:

provided all the free-State men will go to the polls and vote their principles in accordance with their professions. If such is not the result, let the consequences be visited upon the heads of those whose policy it is to produce strife, anarchy, and bloodshed in Kansas, that their party may profit by slavery agitation in the northern States of this Union."

In this speech there is not the slightest allusion whatever to a subsequent ratification of the constitution to be formed before it would have validity; not the slightest reference to any such construction of the Kansas-Nebraska act. The language is: "*Kansas is about to speak for herself through her delegates assembled in convention to form a constitution.*" It was in the choice of these delegates that the responsibility was to rest upon those who, for partisan purposes, under the control of leaders in distant States, should absent themselves from the polls. That was the time their voice was to be legally heard in the formation of a State constitution; and if they chose to be silent, then they were to be silent ever afterward. They would have nobody to blame but themselves.

It is true that Gov. Walker, while plainly telling the people that the convention would have full power to make a constitution without submitting it, also told them that, in *his judgment*, the entire constitution to be framed by them ought to be submitted to the decision of the people, and that if it were not, in his judgment Congress would not, and ought not to, admit the State under it. In this he differed widely from Mr. Stanton, and in making the declaration he greatly transcended his rightful power. He undertook to prescribe for Congress the exercise of a right they do not possess under the constitution of the United States. When a new State presents a constitution for admission Congress has no more power to inquire into the manner of its adoption than the matter of its substance. The matter cannot be inquired into further than to see that it is republican in form; and the mode and manner of its adoption cannot be inquired into only so far as to see that it has been formed in such way as the people have legally established for themselves. The doctrine of Governor Walker would be utterly subversive of all State rights and State sovereignty; for one of the unquestionable attributes of sovereignty is the absolute right to select its own mode of giving expression to its own will.

If, then, upon general principles, as well as from established usage, it clearly appears that the validity of a constitution does not necessarily depend upon its having received a popular ratification, is there anything in the Kansas bill that varies this case from former precedents? On this point Governor Walker says "these rights" (that is, the right of having the constitution as a whole submitted to a popular vote) "I have ever regarded as fully secured to the people of 'all the Territories' in adopting their State constitutions by the Kansas-Nebraska bill. Such is the construction of this Kansas act by its distinguished author, not only in his late most able argument, but by addresses made and published by him long antecedent to that date, showing that this sovereign power of the people in acting upon a State constitution is not confined to the question of slavery, but includes all other subjects in such an instrument. Indeed, I believe the Kansas-Nebraska bill would have violated the rights of sovereignty reserved

to the people of each State by the federal Constitution, if it had deprived them, or Congress should now deprive them, of the right of voting for or against their State constitution."

What part or clause of the Kansas act gave Governor Walker the idea that it secured not only to the people of that Territory, but "all other Territories," the rights he mentions, this committee are utterly at a loss to imagine. If there is a word or sentence in it which embodies any such security they have been unable to discover it; and if the distinguished senator from Illinois, who is thus styled the author of that bill, ever gave any such construction to it, antecedent to his "late" speech, this committee are not aware of it. If any such construction was put upon any part of it during its discussion in Congress in 1854, or afterward, or during the canvass of 1856, by that senator, or any person else, this committee are equally unaware of it. On the contrary, they have good evidence that no such construction was then or afterward, or up to the 12th June last, put upon it by the senator who is called its author. In the speech made by him on that day he certainly put no such construction on the bill. During the last Congress the same senator reported a bill, though he was not the author of it, providing for the call of a convention in Kansas to form a State constitution for admission in the Union. That bill made no provision for the submission of the work of the convention to a decision of the people. That was known as the Toombs bill. It passed the Senate, and received the vote of the senator from Illinois. In giving that vote, Governor Walker may believe that the senator "*violated the rights of sovereignty reserved to the people of each State by the federal Constitution,*" but he can hardly affirm that by it the senator gave that construction to the Kansas bill which the governor says he had so repeatedly given before his late speech. Indeed, the record of that senator shows that he did not deem it necessary, under the Kansas-Nebraska bill, to submit even the slavery question to a decision of the people. The language of the Kansas bill, as first reported by Senator Douglas, on this subject was in these words:

"All the questions appertaining to slavery in the Territory and in the new States to be formed therefrom are to be left to the decision of the people residing therein, through their appropriate representatives."

This shows that he then thought that the act of sovereignty, in determining this question on the formation of a constitution, could be performed by the people, through the "intermediate body" of "*representatives,*" as fully and completely as if done by themselves. The words finally adopted on this point in the bill, after declaring the restriction of 1820 null and void, were as follows:

"It being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

If any inference is to be drawn from this change of phraseology, it is that the object aimed at by it was to leave even the slavery question to be settled, as all others had been before, by the people, in their own way, in conformity to law and the Constitution of the United States. If they chose to do it by representatives, the power was given them so

to do it; if they chose to do it by general popular vote, the power was given them to do it in that way. Congress was to abstain from all interference or intervention with or over their own way or manner of doing it, so that it was legally done under the Constitution of the United States.

The difficulty with Governor Walker seems to be, that they have chosen a way of their own different from the one that he would have had them to adopt. He wished them to decide that as well as other questions in his way; they preferred their own way to his. To correct this disobedient proceeding on their part, he seems to be willing now to shed the "last drop of his life's blood."

As before stated, the Lecompton convention did submit the slavery question to a popular vote. This was a matter entirely discretionary with themselves. In doing it, they were doubtless actuated by the most patriotic motives. This was the origin of all the strife in the Territory. This was the subject which Mr. Stanton had stated with so much confidence would "*in some way*" be submitted to a direct vote of the people. On the submission, every *bona fide* citizen in the Territory entitled to the elective franchise had a full and perfect right to vote upon it. If any abstained from voting, the fault was their own. They have no just cause to complain of Congress for admitting the State under a constitution with a clause which they do not like when they had a fair opportunity to vote it down, if they really have, as they pretend, a majority in the Territory. The official vote on the ratification, when so submitted, as will be seen by Exhibit No. 6, was as follows:

Constitution, with slavery.....	6,226
Constitution, without slavery.....	569

Making an aggregate of 6,795 voting on the question, and a majority of 5,657 for the constitution as now presented. This is certainly a very large majority of those joining in the election, if not a majority of all the voters in the Territory, in favor of the constitution as it is now before Congress; and according to the doctrine of Governor Walker, in his inaugural address, "those who abstain from the exercise of the right of suffrage authorized those who did vote to act for them, and the absentees are as much bound under the law as if all had participated in the election." If this view be correct, then no constitution ever came up with a stronger endorsement by popular vote, and every objection to its validity on the ground of its wanting even this sanction is utterly without foundation.

Another objection of the same class is, that no enabling act was passed by Congress, or in other words, that the legislature of Kansas did not have the legal right to call the convention that formed the constitution. This objection is equally untenable both on principle and authority. The power to call a convention to form a State constitution is clearly within the "*rightful subjects*" of legislation granted in the organic act. But even without that the precedents are numerous where conventions have been called without such a grant. Out of the eighteen new States heretofore admitted nearly half of them have come in under constitutions formed without any direct authority

of Congress. Amongst these may be named Tennessee, Michigan, Iowa, Texas, Arkansas, Kentucky, Florida, and California. In addition to this, it may be added that the most prominent of those who now urge this objection are estopped by their own declarations and admissions. Governor Walker, for instance, in his inaugural address in relation to the *right of the territorial legislature* to call a convention uses this language :

"But it is said that the convention is not legally called, and that the election will be not freely and fairly conducted. The territorial legislature is the power ordained for this purpose by the Congress of the United States, and in opposing it you resist the authority of the general government."

And again he says :

"The territorial legislature, then, in assembling this convention, were fully sustained by the act of Congress."

Mr. Stanton expresses similar sentiments in that part of his inaugural address before quoted, Judge Douglas, in his Springfield speech, also quoted, does not intimate that he then thought there was any necessity for an enabling act. Moreover, his position on the admission of California is well known. In that case a constitution had been sent up formed by a convention called together without the slightest pretext of legal authority, either from Congress or any territorial organization. A proclamation of a military commander was the sole foundation for it, and yet upon that occasion Judge Douglas said :

"I hold that the people of California had a right to do what they have done ; yea, they had a moral, political, and legal right to do all they have done."

How any person could maintain the legality of the proceedings in the California case and deny them in Kansas, or hold that an enabling act by Congress was necessary in the Kansas case when it was not necessary in California, is incomprehensible to this committee. They dismiss this point without further remark.

But other objections of a different class and character have been started. These relate to the fairness of the election of delegates to the constitutional convention. On this head it is said that quite a number of counties, 19 in all, making more than half of the counties in the Territory, were disfranchised by the law of the 19th February, 1857, and were wholly unrepresented in the convention. By the statutes of Kansas, as all can see by reference, there are 37 counties laid out with names and boundaries in the Territory. Three of these—to wit: Washington, Clay, and Dickinson—were omitted in the act of the 19th February creating districts for the election of delegates. They lie in the extreme western frontier of the Territory, as will be seen by the map, and exist mainly in law and on paper. They seem to be destitute of population, without officers or civil organization. The 34 organized counties were all embraced in the act, as will be seen in the 19th section. By that section they are arranged into election districts, as follows :

- 1st district, Doniphan county.
- 2d " Brown and Nemeha counties.
- 3d " Atchison county.
- 4th " Leavenworth county.

5th district,	Jefferson county.
6th “	Calhoun county.
7th “	Marshall county.
8th “	Riley and Pottawatomie counties.
9th “	Johnson county.
10th “	Douglas county.
11th “	Shawnee, Richardson, and Davis counties.
12th “	Lykins county.
13th “	Franklin county.
14th “	Weller, Breckinridge, Wise, and Madison counties
15th “	Butler and Coffee counties.
16th “	Lynn county.
17th “	Anderson county.
18th “	Bourbon, McGee, Dorn, and Allen counties.
19th “	Woodson, Wilson, Godfry, Greenwood, and Hunter counties.

The object of the law, as all its details plainly show, was to have as fair an election as possible. The registry of voters as required was made and returned for these districts as follows, as will be seen by Mr. Stanton's proclamation : (Exhibit No. 3.)

No. of district.	Names of counties.	No. of legal voters.
First	Doniphan	1,086
Second	Brown	206
	Nemaha	140
Third	Atchison	804
Fourth	Leavenworth	1,837
Fifth	Jefferson	555
Sixth	Calhoun	291
Seventh	Marshall	206
Eighth	Riley	353
	Pottawatomie	205
Ninth	Johnson	496
Tenth	Douglas	1,318
Eleventh	Shawnee, Richardson, and Davis	283
Twelfth	Lykins	413
Thirteenth	Franklin	No return.
Fourteenth	Four counties	No return.
Fifteenth	Two counties	No return.
Sixteenth	Lynn	413
Seventeenth	One county, (Anderson,)	No return.
Eighteenth	Bourbon, McGee, Allen, and Dorn	645
Nineteenth	Five counties	No return.
	Total	9,251

Upon this return of registration, showing 9,251 voters, (which, upon all reasonable probabilities, must have been within one or two thousand of all the legal voters at that time in the Territory,) the acting governor, as will be seen from the same exhibit, made an apportionment of representation, according to the provisions of the act. This was done by dividing the whole number of voters (9,251) by 60, the number of delegates constituting the convention, and apportioning

the delegates to the respective counties in districts, as above set forth, from which a registry had been reported. The apportionment was as follows :

1st district,	Doniphan county,	7 delegates.
2d do	Brown and Nemaha.....	2 do
3d do	Atchison.....	5 do
4th do	Leavenworth.....	12 do
5th do	Jefferson.....	4 do
6th do	Calhoun.....	2 do
7th do	Marshall.....	1 do
8th do	Riley and Pottawatomie.....	4 do
9th do	Johnson.....	3 do
10th do	Douglas.....	8 do
11th do	Shawnee, Richardson, and Davis.....	2 do
12th do	Lykins.....	3 do
16th do	Lynn.....	3 do
18th do	Bourbon, McGee, Dorn, and Allen.....	4 do

From this it will be seen that twenty-one out of the thirty-four organized counties were embraced in the apportionment; and the journals of the convention (Exhibit No. 4) show that all these were represented in that body. From the same proclamation it will be seen that five election districts, embracing thirteen counties, were left out of the apportionment. These were, as will appear from what has been stated, the 13th district, being Franklin county; the 14th, including Weller, Breckinridge, Wise, and Madison; the 15th, Butler and Coffee; the 17th, Anderson county; and the 19th, Woodson, Wilson, Greenwood, Godfrey, and Hunter.

Of these thirteen counties nine had but a small population in them. This (apart from the statement of Mr. Calhoun and other reliable information) clearly appears from the returns of the election on the 4th January last, the official announcement of which is filed with the papers of this report. From that it will be seen that not a vote was returned as having been cast in that election in *seven* of these *thirteen* counties about the disfranchisement of which so much complaint has been made. These seven counties are Weller, Wise, Butler, Wilson, Godfrey, Greenwood, and Hunter. Nor was there a vote at that election in either of the three unorganized counties of Washington, Clay, and Dickinson.

In two of the thirteen counties stated above—to wit: Madison and Woodson—there were but 90 votes cast—40 in the former and 50 in the latter; and but 1,135 in the four remaining—to wit: Franklin, 304; Breckinridge, 191; Coffee, 453; and Anderson, 177; so that if the election of the 4th January should be received as evidence of anything, it would prove nothing more conclusively than that the clamor about the disfranchisement of half the people, or even a considerable portion of the people of the Territory, is utterly groundless, and resorted to only as a pretext for the want of something more solid. This pretext becomes the more glaring when the cause of there being no registry in these four counties of Franklin, Breckinridge, Anderson and Coffee is understood. This is fully explained not only by the

statement of Mr. Calhoun alluded to, but by the deposition of George Wilson, to be found in Senate Document No. 52, at this session. From these and other notorious facts, the real and true cause of a failure of registry of voters in these counties, and a consequent failure of representation being apportioned to them in the convention, too clearly appears to need much explanation. The parties in whose behalf the cry of disfranchisement is now raised, prevented the registry themselves. Since the organization of that Territory, there has been in it a class of men whose avowed object was to oppose and overthrow all legal authority. They went there with this purpose. Their object was to set up an *imperium in imperio*. In the language of the President, they have been in a "state of rebellion" against the legally constituted authorities from the beginning. This is fully established by numerous reports of Governors Shannon, Geary, and Walker, and Secretary Stanton. They were, to a certain extent, the emissaries of those who denounced the Kansas bill when it passed as a great "wrong" and an "outrage," and who were resolved to defeat its peaceful operation.

To show the groundlessness of the first clamor, as well as the last, we might here inquire what was the wrong or outrage of that bill? Was it a great wrong or outrage to permit the people of New York, Massachusetts, or other States of the north, as well as the people of the south going into a new Territory, the common property of all, to be as free as they were at their native homes, and in forming new States to enjoy the same rights which their fathers did in the formation of all our present State constitutions and governments? This is just what that bill did on the main question of controversy in Kansas—nothing more—nothing less. But, rather than see this great principle of right, justice and equality carried out, this class of men went to that Territory to defeat it at every hazard. Setting themselves up in defiance of law from the beginning, they now denounce a constitution made by those who conformed to law as "a fraud," "a cheat," and "a swindle." But the more *ultra* of the same party elsewhere have long since said much worse things of the Constitution of the United States. This class of malcontents in Kansas are organized in a party having the control of some of the counties. They refused to recognize the validity of the law requiring the registry to be made. They opposed its execution both by withholding their own names in some instances, and in others by driving the officers whose duty it was to make it, from the country, with threats to take the life of any who should attempt it. This was particularly the case in Anderson and Franklin counties. If, then, these counties were unrepresented in the convention, their *disfranchisement* was the work of their own people. Another significant fact to be noticed from the registry and apportionment together with the official report of the 4th January, is this: that the five counties, to wit, Leavenworth, Atchison, Douglas, Doniphan, and Jefferson, at that election cast an aggregate vote of 5,118, which is a majority of the whole vote reported to have been cast throughout the entire Territory against the constitution. And yet all these counties were registered and represented in the convention. They had thirty-six of the sixty

delegates of which that body was composed. Now, if it be true that the opponents of the constitution are so largely in the majority in those counties, and are so violent in their opposition, as they are represented to be, why did they not elect men to the convention who would have formed a constitution more to their liking? These counties alone, by the registry, had within four votes of two-thirds of the convention, and could have made just such a constitution as would have been most agreeable to their people. If they refused to act at the proper time, why do they complain now? If others, conforming to the law, went into the convention and formed a constitution to suit themselves, was it not their fair, just, and legal right to do it? These complaints come too late, even if they come from orderly, law-abiding citizens. As well might the thousands who abstained from the polls or threw away their votes, at the last presidential election, now come forward and claim that the present administration is illegal, and should be set aside, because the inaugurated Chief Magistrate did not receive a majority of all the legal voters of the United States, as for these people now to complain of the result of their own *laches* or illegal acts, or to seek to remedy it by any such irregular proceeding as the vote taken on the 4th January against the constitution, after it had been legally adopted.

But the inquiry is made whether the constitution is acceptable and satisfactory to a majority of the legal voters of Kansas. This is a matter the committee could not ascertain and report upon with certainty without polling every legal voter in the Territory; and if they had gone there and taken the vote themselves for and against the constitution, perhaps the majority might have varied from one side to the other, by death, emigration, or change of opinion, before their report could have been made. That course of investigation is wholly impracticable. The only proper mode of pursuing the legitimate inquiry before Congress, in the judgment of the committee, is to ascertain whether the constitution embodies the legally and fairly expressed will of those who by their acts acknowledge themselves to be *bona fide* citizens and constituent elements of the society or political community to be organized in a State within its jurisdiction. Those who by their acts show themselves not to be *bona fide* citizens, but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken in the count. The convention that formed the constitution was as fairly constituted as could be with the view of allowing every *bona fide* citizen in Kansas entitled to vote to have a free opportunity to be heard in its formation. This Mr. Stanton said; this Governor Walker said; this Judge Douglas said; this also abundantly appears from the facts and evidence now submitted. The only correct test of the will of a majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it. The majority of those going to the polls when the election of delegates, with full and plenary power took place, was largely in favor of those who made the constitution; and when the direct question on the slavery

clause was submitted on the 21st December, the like majority was overwhelmingly in favor of it. On the 4th January, in the election of State officers under the constitution, it is well known that both parties joined in a vigorous contest for the organization of the State under it. Upwards of 12,000 voters participated in that election. That vote shows most clearly that the constitution is not only *acceptable*, but has *been accepted* by at least four-fifths of the voters of the Territory, though it may not be entirely satisfactory to all of them.

As to the alleged frauds on the 4th January for State officers under the constitution, the committee have not deemed it pertinent or proper for them to enter into any investigation. They are matters to be inquired into and tried by other tribunals, as all frauds in other State elections are. This House can have no jurisdiction over them in any way; no more than they have over the frauds, if any, in the States of New York, Indiana, Illinois, or any other State in elections for State officers. Should Kansas be admitted, and the seat of the member returned to this House be contested on the ground of alleged frauds, then this House would be the proper tribunal to decide that question. There will be other legitimate tribunals to decide all others.

Upon a review, then, of all these facts, and a survey of the whole field here presented as a question of public policy, looking not only to the present and future welfare of the people of Kansas, but to the peace and harmony of the whole Union, the committee, in conclusion, express their entire agreement with the President in his recommendation of the immediate admission of the State.

That a large number of the States would look upon her rejection, under all the circumstances, with extreme sensitiveness, if not alarm, cannot be denied or doubted. This is natural. When they see that no new State has ever presented herself for admission with a constitution formed and adopted with greater regularity and more strictly in conformity to law; when they remember the irregularities that were waived on the admission of California, whose constitution was formed without any legal authority; when they see the irregularities in the case of Minnesota now applying, which will doubtless be waived; when they feel and know that no valid or well founded objection can be made to the constitution of Kansas, either in its substance or manner of adoption, except that it recognizes slavery so long as the sovereign State may choose to allow it; when they know that the fiat has gone forth by that party which mainly urges these unusual objections, that no State whose constitution recognizes slavery shall ever hereafter be admitted into the Union, and that the rejection of Kansas would increase and inflame that factious, sectional, and unconstitutional spirit—is it not natural that they should come to the conclusion that the real secret of its rejection is this bare recognition of an institution which forms the basis of their civil society? Is it not natural that this act would strongly tend to produce distrust towards the common government, by awakening a conviction that a determination is fixed by the majority never to allow another member of the federal family to enter the Union with institutions similar to theirs? Will not her rejection tend to weaken the bonds which hold the States together? These are grave questions, involving in their solution the destinies of

the future. The committee barely allude to them; they are suggestive enough of themselves without comment or enlargement. But the committee urge their calm and dispassionate consideration, especially as it is believed by them the peace, quiet, welfare, and prosperity of Kansas herself will be promoted by her admission, as well as the general harmony of all the States. If it be true that a majority of the people of Kansas are opposed to the institution of slavery, as now recognized by her constitution, what easier mode could be adopted for them to rid themselves of it than to allow them to take charge of this with all other matters of internal policy, clothed with the exercise of all powers belonging to them as a sovereign State of the Union? There is nothing now in their constitution more objectionable on this point than is to be found in their organic act and the Constitution of the United States, under which they must continue so long as they remain in a territorial condition. The argument that Congress, by the admission, will be forcing any institution whatever upon an unwilling people, is as gratuitous as it is groundless, even if a majority there be opposed to slavery. For by the Constitution of the United States slavery is as much forced upon them as by the constitution of Kansas. This Congress cannot prevent, and this will continue to be the case until it is removed, if ever, by the sovereign power of the State.

The committee, therefore, report the following resolution:

Resolved, That Kansas ought to be admitted as a State into the Union under the Lecompton constitution on an equal footing with the other States, as recommended by the President.